



**TOWN OF MILLIKEN
TOWN BOARD
AGENDA MEMORANDUM**

To: Mayor Tokunaga and Town Board of Trustees	Meeting Date:
From: Linda Michow, Town Attorney	Wednesday March 23, 2016
Via: Kent Brown, Town Administrator	

Agenda Item #	Action:	Discussion:	Information:
	x		
Agenda Title: Ordinance No. 727 Amending Chapter 13 to enact a new Article V concerning Town's Storm Water Utility Enterprise and Imposition of Storm Water Utility Fees			
Attachments: Ordinance No. 727			

PURPOSE

The Town of Milliken recently established a Stormwater Utility through the passage of an ordinance on December 10, 2014. In the process of reviewing the procedures to collect a proposed stormwater fee, the framework to impose and collect those fees as a separate enterprise in the Code was not completed. This Ordinance creates that framework within the Code.

BACKGROUND

The Town Board previously adopted Ordinance No. 704 concerning the establishment of the Town's Storm Water Management and Facility Utility Enterprise ("Utility"). While Ordinance No. 704 created the Utility to comply with conditions imposed on the Town in its acceptance of grant monies from the Energy and Mineral Impact Assistance Grant, it does not include the necessary framework to enable the Town to impose fees and perform other functions of an enterprise as defined in Article X, Section 20 of the Colorado Constitution. The proposed Ordinance No. 727 further implements the direction of the Board in terms of establishing a mechanism to impose and collect storm water fees from customers within the Town and certify delinquent fees for collection.

PROPOSED ORDINANCE

Ordinance No. 727 adds a new Article V to Chapter 13 of the Municipal Code. It includes relevant definitions, enumerates powers of the Town's Storm Water Enterprise Utility, and establishes a framework for imposition and collection of storm water utility fees. The actual fees to be imposed will be adopted by the Board by separate Resolution. Ordinance No. 727 also sets forth the following exempted types of property:

- Public highways, roads, trails, sidewalks, and bike paths, etc.
- Agriculturally zoned or assessed property.
- Railroad right-of-way.

Delinquent fees shall be certified for collection to the Weld County Treasurer.

BUDGET IMPLICATONS

There are no immediate budget implications for this Ordinance. A resolution at a future Board meeting will establish the actual fees and rates.

STAFF RECOMMENDATION

Town Staff recommends approval of Ordinance No. 727, as may be amended by the Board of Trustees, to allow the Town to adopt storm water utility fees to assist in financing necessary storm water improvements within the Town.

SUGGESTED MOTION

"I move to approve Ordinance No. 727 Amending Chapter 13 of the Milliken Municipal Code to Enact a New Article V Concerning the Town's Storm Water Utility"

ORDINANCE NO. 727

AN ORDINANCE AMENDING CHAPTER 13 OF THE MILLIKEN MUNICIPAL CODE TO ENACT A NEW ARTICLE V CONCERNING THE TOWN'S STORM WATER UTILITY ENTERPRISE AND THE IMPOSITION OF STORM WATER UTILITY FEES

WHEREAS, the Town of Milliken is a municipal corporation duly organized and operating pursuant to the laws of the State of Colorado; and

WHEREAS, the Town is authorized pursuant to Article 15 of Title 31 of the Colorado Revised Statutes to adopt regulations in further of the protection of health, safety and welfare of the community; and

WHEREAS, the Board of Trustees previously enacted Ordinance No. 704 to establish a storm water management and facility utility enterprise in order to comply with conditions imposed on the Town in its acceptance of grant monies from the Energy and Mineral Impact Assistance Grant from the Colorado Department of Local Affairs; and

WHEREAS, the Board of Trustees finds it necessary to codify requirements and regulations governing the storm water management and facility utility enterprise and to authorize the imposition of fees upon customers and properties in the Town to promote the protection of the public from damage from storm water runoff.

NOW, THEREFORE IT IS ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF MILLIKEN, WELD COUNTY, COLORADO, AS FOLLOWS:

Section 1: The above-stated Recitals are hereby restated and incorporated into the Milliken Municipal Code as though fully set forth herein.

Section 2: Chapter 13 of the Milliken Municipal Code is hereby amended to add the following new Article V, titled Storm Water Utility, to read in full as follows:

Article V. Storm Water Utility

Sec. 13-5-10 Purposes.

It is the intent of this Article to: promote the public health, safety and welfare by minimizing flood losses and the inconvenience and damage resulting from uncontrolled and unplanned storm water runoff; to implement a storm water utility to coordinate, design, construct, manage, operate and maintain the storm water management system; to establish a reasonable and equitable program to implement and finance storm water management and to encourage and facilitate urban water resources management techniques, including, without limitation, detention of storm water, reduction of the need to construct storm sewers, reduction of pollution and enhancement of the environment.

Sec. 13-5-20 Definitions.

As used in this Article, unless the context in which they are used clearly requires otherwise:

Customer means the owner of record of a lot, tract or parcel of land within the Town boundaries.

Runoff means that part of snowfall, rainfall or other storm water which is not absorbed, transpired, evaporated or left in surface depressions and which then flows controlled or uncontrolled into a watercourse or body of water.

Storm water facilities means any one (1) or more of various devices used in the collection, treatment or disposition of storm, flood or surface drainage waters, including man-made structures and natural watercourses, for the conveyance of runoff, such as detention areas, berms, swales, improved watercourses, channels, facilities, inlets, collection, drainage or disposal lines, intercepting sewers, joint storm and sanitary sewers, sewage disposal plants, outfall sewers, pumping plants and other equipment and appurtenances, and all extensions, improvements, remodeling, additions and alterations thereof; and any and all rights or interests in such sewerage or storm water facilities.

Storm water system means all of the storm water facilities used by the Town for the control of runoff.

Utility means the storm water drainage and flood control utility that is created under this Article.

Sec. 13-5-30 Storm water utility considered a Town-owned enterprise.

There is hereby established a storm water drainage and flood control utility of the Town. Such Utility shall construct, maintain and operate the storm water system of the Town. The Utility shall be considered an "enterprise" as defined in Article X, Section 20 of the Colorado Constitution. All funds collected by the Town from the various sources authorized herein shall be properly identified and transferred for deposit in the Storm Water Utility Enterprise Fund to be used for the operation of the Utility.

- (1) The enterprise shall be authorized to have and exercise the following powers in furtherance of its purposes:
 - a. To hold meetings concurrently with regular and special meetings of the Board of Trustees;
 - b. To have and use a seal;
 - c. To issue its revenue bonds for storm water purposes in the manner in which Town revenue bonds may be issued;
 - d. To pledge any revenues of the Town's storm water system to the payment of such revenue bonds and to pay such revenue bonds therefrom;

- e. To enter into contracts relating to the storm water system in the manner in which Town contracts may be entered into;
 - f. To make representations, warranties and covenants relating to the storm water system on behalf of the Town;
 - g. To exercise rights and privileges of the Town relating to the storm water system; and
 - h. To bind the Town to perform any obligation relating to the storm water system other than any multiple-fiscal-year direct or indirect debt or other financial obligation of the Town without adequate present cash reserves pledged irrevocably and held for payments in all future years.
- (2) All revenues and expenditures of the Town or of the enterprise relating to the storm water utility system shall be considered revenues and expenditures of the enterprise and shall not be used for general governmental purposes.

Sec. 13-5-40 Use of storm water utility fund.

The Utility fund shall be used only to pay the costs of construction, operation and maintenance of the storm water system and the costs of administration of the storm water utility. The Town may pledge all or any portion of the fund, including revenues anticipated to be collected, to the payment of principal, interest, premium, if any, and reserves for general obligation bonds, revenue bonds or any other obligations lawfully issued or otherwise contracted for by the Town for the payment or other financing of costs of the storm water system, or for the purpose of refunding any obligations issued or otherwise contracted for such purposes.

Sec. 13-5-50 Storm water utility fee.

(a) There is hereby imposed on each customer a storm water utility fee. The amount of such fee shall be as set by the Board of Trustees in the fee schedule adopted by resolution and may be changed from time to time

(b) Customers of residential property shall be billed on a flat-rate basis at the rate amount set forth in a fee schedule adopted by resolution pursuant to this Article.

(c) Customers of nonresidential property shall be billed at a rate calculated through consideration of lot size, impervious area, and other considerations as determined pursuant to a rate study and fee schedule adopted by resolution of the Board of Trustees.

(d) Exemptions. The following are exempt from the storm water utility fee imposed by this Article:

1. All public highways, streets, roadways, sidewalks, bike paths and other public rights-of-way, and lakes used as storm water facilities are part of the storm water facilities.

2. All customers whose property within the Town is located within the Agricultural District or assessed as agricultural land by the Weld County Assessor's Office.

3. All railroad rights-of-way.

Sec. 13-5-60 Master Drainage Plan.

The *September 2014 Milliken Storm Water Master Plan*, prepared by Icon Engineering, Inc., together with all amendments thereto, which amendments may be made by resolution of the Board of Trustees, is adopted as the Master Drainage Plan for the Town. Such plan shall guide the storm water utility in the construction, maintenance and operation of storm water facilities.

Sec. 13-5-70 Nonresidential storm water fee adjustment and appeal process.

(a) This Section shall apply only to nonresidential property. No adjustments or appeals shall be heard or considered for residential customers who are charged a flat rate.

(b) Any non-residential customer desiring to dispute the amount of any fee may appeal the assessment of said fee to the Town Administrator by submitting a written notice of appeal within thirty (30) days of the billing date. If a notice of appeal of the fee payment is received by the Town within the thirty (30) days of the billing date, then the Town Administrator shall schedule an administrative hearing on said appeal to take place within forty-five (45) days of receipt of the notice of appeal. Notice of the time and place of the appeal hearing shall be mailed to the customer by certified mail, return receipt requested. The Town Administrator, as a result of evidence produced at said hearing, after considering the facts submitted by the customer, may deny the appeal or adjust the fee to be assessed to conform with the requirements of this Article. Any decision of the Town Administrator shall be final.

Sec. 13-5-80 Delinquency and collection of fees.

The storm water utility fee imposed in accordance with this Article shall be paid upon receipt of the bill and in no case later than thirty (30) days of the date of the bill. If the bill is not paid within thirty-five (35) days of the date of the bill, and all appeals are exhausted under Section 13-5-70 above, it shall be deemed delinquent whereupon a ten dollar (\$10.00) surcharge shall be imposed for collection. In case the tenant in possession of any premises of a customer pays the fee, it shall relieve the customer from such obligation. The owner of any property, premises, lot or tract shall be liable for payment of the storm water utility fee. All delinquent storm water utility fees and accrued surcharges shall be certified by the Finance Director of the Town to the Weld County Treasurer, pursuant to Section 31-20-105, C.R.S., as amended, and collected and paid over to the County Treasurer in the same manner as taxes.

Section 3: Codification. The Town Clerk is hereby directed to work with the Town's Municipal Code codifier to ensure that the provisions of this Ordinance are included in the next codification of the Milliken Municipal Code.

Section 4: Severability. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the ordinance. The Board of Trustees hereby declares that it would have passed the ordinance including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.

Section 5: Repeal. Existing or parts of ordinances covering the same matters as embraced in this Ordinance of the Milliken Municipal Code are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

Section 6: Effective Date. This Ordinance shall take effect and be in force thirty (30) days after publication following final adoption.

Introduced, read, adopted, signed and ordered published in full by the Board of Trustees of the Town of Milliken this ___ day of _____, 2016.

TOWN OF MILLIKEN

Milt Tokunaga, Mayor

ATTEST:

APPROVED AS TO FORM:

Cheryl Powell, Town Clerk

Linda Michow, Town Attorney

Published: _____